

The cited standard provides as follows:

(c) Cages, platforms, or other devices used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency. Such catches or devices shall be tested at least once every two months.

Rushton has filed a post-hearing motion to supplement the record to offer into evidence the affidavit of Raymond G. Roeder, Mine Manager of the Rushton Mine (marked as Exhibit C-7) and the affidavit of Gerald P. Scanlon, Resident Mining Engineer of the Rushton Mine (marked as Exhibit C-8). The stated purpose of these two exhibits is to supplement Rushton's evidence concerning the likelihood of a failure in the coupling between the brakecar and mancar, which question is at issue in this case. These exhibits contain technical analyses of the coupling strength between the brakecar and the mancar, as well as the loads the various components are subjected to, which are clearly relevant, at least insofar as they concern the equipment as it existed on the day the citation was written, June 23, 1986. The Secretary objects to these submissions on the grounds that they go beyond the scope of the testimony adduced at the hearing and obviously do not provide an opportunity for cross-examination. Considering the proffered exhibits in their entirety, I agree. However, I am going to admit Exhibits C-7 and C-8 into evidence for the very limited purpose of clarifying certain estimates that were made on the record at the hearing and which are applicable to the equipment as it existed on June 23, 1986. These estimates were subject to cross-examination at the hearing and I see no reason not to admit the more correct data into evidence if the party sponsoring it has taken the trouble to refine it. In each case the estimate which is in the hearing record and the later computation are relatively close and the raw data is available for anyone to verify or differ with the mathematical computations.

Findings of Fact

1. Access into and out of the Rushton Mine is via a 16 degree slope approximately 700 feet in length beginning at the surface.

2. In its existing configuration, there is a hoist with a one-inch diameter steel cable rated to hold approximately fifty tons dead weight attached to a brakecar which is in turn coupled to a mancar or a supply car to take men and supplies, respectively, into and out of the mine.